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Held at Headquarters, New York, on Monday, 5 November 2012, at 3 p.m.

Chair: Ms. Reich (Vice-Chair) ..... (Hungary)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Mr. Kelapile

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In the absence of Mr. Berger (Germany), Ms. Reich (Hungary), Vice-Chair, took the Chair.

The meeting was called to order at 3.15 p.m.

Agenda item 130: Programme budget for the biennium 2012-2013 (*continued*)

Capital master plan (continued) (A/67/75 (Vol. V), A/67/330, A/67/350 and Add.1, and A/67/548)

1. **Mr. Stojanovski** (Australia), speaking also on behalf of Canada and New Zealand, said that, while his delegation was greatly encouraged by the progress of work in three major areas under renovation — the Secretariat Building; the Conference Building; and the basement levels of the Headquarters complex — it remained concerned about the ongoing cost overruns and the lack of any comprehensive strategy to restore project costs to within the limits of the approved budget. However, he recognized that most of the causes of the overruns, such as unexpectedly difficult concrete and asbestos conditions in the basement and Conference Building, additional swing space needs and security concerns, could not have been fully foreseen and that it would be difficult to absorb the resulting associated costs within the approved budget so late in the project. Had the Member States been aware of the level of the associated costs at the beginning of the project, they would doubtless have looked for a way of dealing with them. That aspect of the capital master plan project should serve as a lesson to be applied to all future major construction projects.

2. In the view of the three delegations, such measures as deferring the removal of the North Lawn Building, suspending renovation of the Library Building and South Annex Building and deferring for 12 months the decision on how to tackle associated costs did not amount to a viable, forward-thinking means of reducing the cost overruns. The Secretariat should instead present to the General Assembly a comprehensive strategy containing a realistic estimate of total costs, viable methods of dealing with cost overruns and providing options for dealing with the Library Building and South Annex Building. He therefore welcomed the Administration's commitment to implementing the recommendations of the Board of Auditors. The Administration should also pay close attention to the recommendations resulting from the Office of Internal Oversight Services construction audit, particularly with regard to the lessons learned. In addition, for the remainder of the project's implementation, a more suitable frequency for reporting to the General Assembly should be identified. Cost overruns should not be exacerbated by failure to agree upon a solution, whether through cutting back the project's scope or specifications, making cost savings or finding ways of covering associated costs. To reduce the Organization's need for space and resources in the future, and to generate savings, flexible office solutions, such as "hot-desking", should be contemplated.

3. **Mr. van den Akker** (Observer for the European Union), speaking also on behalf of the acceding country Croatia; the candidate countries Montenegro, Serbia, the former Yugoslav Republic of Macedonia and Turkey; and the stabilization and association process countries Albania and Bosnia and Herzegovina, said that, while his delegation had been and would continue to be a strong supporter of the capital master plan, the Board of Auditors and the Advisory Committee had raised a number of concerns, and their recommendations should be duly implemented.

4. Member States of the European Union were concerned about the capital master plan cost overruns and had previously called for a full and transparent overview of all costs. However, as such an overview was still absent, particularly for the associated costs after 2013, the Secretariat must produce a complete, well-justified and robust anticipated final estimate for the project, in line with the recommendations of the Board of Auditors and the Advisory Committee. More information would also be appreciated on how the project had been affected by Hurricane Sandy. Another concern was the cost of swing-space. His delegation echoed the recommendation of the Advisory Committee that the Secretary-General should formulate a comprehensive policy for the most efficient use of office space and examine all options, including "hot-desking". In the meantime, flexible working arrangements should be introduced and implemented in the renovated Secretariat Building. Lastly, the lessons learned from the capital master plan should be communicated before planning and implementing any future large-scale projects.

5. **Ms. Azmee** (Malaysia) said that her delegation applauded the Secretariat's contribution to the implementation of the capital master plan, which it fully supported, despite concerns over the completion schedule and projected cost overruns. In that

connection, all possible ways of keeping costs within budget should be explored, transparency should be maintained and steps should be taken to ensure associated costs, including those of the secondary data centre, were absorbed. In addition, any problems with the renovation of the South Annex Building and Library Building should be resolved within the approved budget. In future, the Secretariat should prepare complete budget estimates, including associated costs, for United Nations capital projects before submitting plans to the General Assembly for approval.

6. **Mr. Ono** (Japan) said that his delegation was encouraged by the Secretariat's action to strengthen governance and accountability in connection with the capital master plan, including through reporting the anticipated final cost on a quarterly basis until the project's completion. The Secretary-General's efforts to contain the overall costs and cost-saving and financing proposals were also welcome. Nevertheless, it was imperative that Secretary-General make every effort to contain the associated costs further before he presented his report on the final expenditure for the project at the sixty-eighth session of the General Assembly. In addition, the swing space costs should be kept as low as possible by utilizing the renovated buildings more efficiently through the flexible use of office space, including "hot-desking".

7. **Mr. Lieberman** (United States of America), reaffirming his delegation's strong support for the capital master plan and acknowledging the significant progress made, said that the current budget shortfall, though it had decreased during 2012, was still too high. While he noted that the Secretariat had been responsive to Member States' concerns, and that no additional assessment had been requested from them to cover that shortfall, the project must be delivered on time and within the approved budget, by exploring all possible cost-saving options.

8. To that end, the Secretariat must use industry best practices, processes and oversight to estimate the completion costs for the project, and then use that estimate as a benchmark as the project progressed. The Secretary-General should do everything possible to apply the analysis, recommendations and lessons contained in the reports of the Advisory Committee, the Board of Auditors and the Office of Internal Oversight Services regarding the capital master plan, including examining the use of flexible working arrangements.

9. Lastly, he thanked the Secretary-General and the United Nations staff for their offers of assistance to the host city in the wake of Hurricane Sandy and extended his sincere sympathies to the people and Governments of those Caribbean nations which had also suffered great losses as a result of the storm.

10. **Mr. Larhant** (France) expressed disappointment that the agenda items currently before the Committee had been discussed before the release of the French-language versions of the related reports of the Advisory Committee. While that situation was doubtless an indirect result of Hurricane Sandy, other factors, including the establishment of the Committee's programme of work, had contributed to the delay in issuing documentation in other working languages.

Agenda item 141: Administration of justice at the United Nations (A/67/98, A/67/172, A/67/265 and Corr.1, A/67/349, and A/67/547)

11. **Ms. Taylor** (Executive Director, Office of the Administration of Justice), introducing the reports of the Secretary-General on administration of justice at the United Nations (A/67/265 and Corr.1) and on amendments to the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal (A/67/349), said that the report on administration of justice at the United Nations was the result of close cooperation between the Office of Administration of Justice and all relevant stakeholders. As indicated by the Advisory Committee in its related report (A/67/547), most parts of the formal system of administration of justice had continued to grow in 2011, resulting in a need to strengthen certain parts of the system by extending the terms of office of the sitting ad litem judges of the Dispute Tribunal and their current legal and administrative supporting staff for a further year.

12. Chapter II of the report provided a review of the formal system of justice and outlined efforts within that system to resolve disputes through direct negotiations between the parties or by referral for mediation to the Office of the Ombudsman. Chapter III and the corresponding annexes contained responses to questions from the General Assembly, including efforts to institutionalize good management practices; measures taken to enforce accountability in cases that

resulted in compensation awards; the status of the revised terms of reference for the Office of the United Nations Ombudsman and Mediation Services; more coherent representation and efficient use of resources; and cost-sharing arrangements. In Chapters IV and V, the Secretary-General had identified areas in the formal system that should be strengthened in order to fulfil the mandate of the new system of justice and set out recommendations for action or consideration by the General Assembly.

13. The report contained in document A/67/349 indicated and explained the amendments which the United Nations Dispute Tribunal and the United Nations Appeals Tribunal had made, provisionally and pending approval by the General Assembly in accordance with its resolution 64/119, to their rules of procedure. Although such proposed amendments normally fell within the remit of the Sixth Committee, two of them carried resource implications for the 2014-2015 biennium, detailed in paragraph 11 of the report. The figures provided were an estimate; the actual requirements would be reflected in the proposed programme budget for the biennium 2014-2015.

14. The Committee's attention was also drawn to the report of the Internal Justice Council on administration of justice at the United Nations (A/67/98), which had been prepared pursuant to General Assembly resolution 65/251 and, for the first time, also contained the views of both Tribunals, in accordance with General Assembly resolution 66/237.

15. **Mr. Barkat** (United Nations Ombudsman), introducing the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/67/172), said that the report provided an overview of the work-related concerns raised by the staff of the United Nations Secretariat, the Office of the United Nations High Commissioner for Refugees and the United Nations funds and programmes, and detailed efforts to harmonize standards and practices between the ombudsmen and mediators of those three entities.

16. In 2011, the Office of the United Nations Ombudsman and Mediation Services had received more than 2,200 cases globally, a 28 per cent increase from 2010. The main users of the informal system of dispute resolution were Professional category staff in locations away from Headquarters. Some 1,500 of the total number of cases had been brought by individuals employed in the Secretariat, representing 3.2 per cent of its entire staff, a figure well within industry norms. Staff and managers were mostly concerned with issues relating to their jobs and careers, interpersonal relationships and compensation and benefits.

17. The report also covered systemic, cross-cutting issues related to performance management, the downsizing of missions and investigations and disciplinary processes, on which the Office had engaged in strategic partnerships with the Organization. The Office had also responded to the General Assembly's repeated emphasis on the need to provide all staff members with equal access to the informal dispute resolution system by diversifying its efforts to meet demand, with the help of its seven regional branches, the on-call ombudsmen and mediators, and regular visits by its staff to field missions to address disputes on the spot. In 2011, ombudsmen and mediators had visited the staff of the United Nations Assistance Mission in Afghanistan (UNAMA) and the United Nations Assistance Mission for Iraq (UNAMI) for the first time. However, the lack of separate staffing and travel resources for ombudsmen and mediators to comprehensively serve the personnel of special political missions was a serious concern, and the informal system of conflict resolution as a whole could be improved. The General Assembly should therefore continue to emphasize conflict prevention, informal conflict resolution, good managerial practices and an overall culture of collaboration.

18. **Mr. Kelapile** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the report of the Advisory Committee on the administration of justice at the United Nations and activities of the Office of the United Nations Ombudsman and Mediation Services (A/67/547), said that the system of administration of justice was no longer in the start-up phase and, while the system continued to evolve, the Advisory Committee was concerned that a growing number of cases were proceeding to formal adjudication, particularly as, with the exception of the United Nations Appeals Tribunal, new cases were being received at a greater rate than existing cases were being decided and closed. An interim independent assessment of all functioning aspects of the system should therefore be carried out to take stock and ensure that the system was operating in accordance with the

principles set out in General Assembly resolution 61/261.

19. Pending the outcome of the interim independent assessment, the Advisory Committee had no objection to the Secretary-General's request to extend the terms of office of the sitting ad litem judges of the Dispute Tribunal and their current legal and administrative supporting staff for a further year. However, the Advisory Committee did not support the proposal to hold two plenary meetings of the Dispute Tribunal and three sessions of the Appeals Tribunal per year. Instead it recommended the continuation of the current practice of holding plenary meetings of the Dispute Tribunal when necessary, taking into consideration caseload demands. Until such time as caseload trends had stabilized, the Appeals Tribunal should make every effort to reprioritize resources to increase productivity.

20. The Advisory Committee welcomed the Secretary-General's efforts to disseminate the lessons learned from the Tribunals' judgements and to introduce better managerial practices to address the factors underlying workplace disputes. More comprehensive cost-benefit analysis should be undertaken to determine the viability of the proposed expedited arbitration procedures for consultants and contractors. The Advisory Committee also continued to oppose any extension of access by non-staff personnel to the United Nations system of administration of justice.

21. He recalled the Advisory Committee's previous reservations over the fact that the Office of Staff Legal Assistance provided both advice and legal representation to staff members. In addition, only the General Assembly could decide whether that Office's expenditure constituted expenses of the Organization within the meaning of Article 17 of the Charter. The Secretary-General should urge staff to reconsider the establishment of a mandatory staff-funded mechanism to cover the costs of their representation in cases before the Tribunals, and to present a single, preferred proposal at the sixty-eighth session of the General Assembly.

22. Lastly, taking the view that the informal conflict resolution process played an important role in resolving disputes and avoiding unnecessary and costly recourse to litigation, the Advisory Committee welcomed the work of the Office of the United Nations Ombudsman and Mediation Services, and called for the Office's revised terms of reference to be promulgated without further delay.

23. **Mr. Mihoubi** (Algeria), speaking on behalf of the Group of 77 and China, said that the administration of justice was an integral part of an effective human resources management system and that the Group firmly supported the reforms of the United Nations system of administration of justice. The new system should be closely monitored in order to avoid the failures that the Redesign Panel had identified in the previous system, taking the reduction of the case backlog as the main gauge of success. The Group wished to be kept informed of progress in that regard.

24. The increase in new applications received by both the formal and informal dispute settlement systems indicated clearly that the new arrangements delivered impartial and rapid results and were trusted by staff members. However, the surge in applications could also be a sign of bad management, misconduct and poor relations between staff and management, frustrating the goals set for the new system of administration of justice. The Group therefore agreed with the Advisory Committee that the reasons behind the increase in applications to the Management Evaluation Unit and the Dispute Tribunal should be identified and addressed in order to improve the implementation of good management practices throughout the Organization. He also asked the Advisory Committee to clarify its proposal for an interim independent assessment of the system before the next budget cycle.

25. The Group would examine the various proposals to strengthen the internal justice system and seek further information on the appointment of new members of the Internal Justice Council; the codes of conduct for the judiciary and legal representatives; the financial liability of managers in cases where staff were awarded compensation; the mandate and role of the Office of Staff Legal Assistance; the terms of reference for the integrated Office of the United Nations Ombudsman and Mediation Services; and trends relating to cases concerning staff with disabilities.

26. **Mr. Genest** (Canada), also speaking on behalf of Australia and New Zealand, reiterated the three delegations' long-standing support for an independent, transparent and effective system of administration of justice, which underpinned collective efforts to

strengthen accountability, oversight and human resources management within the United Nations. They shared the Advisory Committee's concerns about the growing number of cases proceeding to formal adjudication and agreed that more should be done to settle disputes through the informal system, which had succeeded in achieving mutually satisfactory solutions found in 70 to 80 per cent of cases.

27. The provision of legal assistance to staff should be complemented by some form of financial contribution by staff members and, while the Secretary-General had made a number of proposals in that regard, it was regrettable that a single preferred proposal had not been submitted to the General Assembly. The Secretary-General's proposals to further strengthen certain aspects of the system, together with the associated resource implications, would be examined carefully in order to ensure that the Organization's internal justice system was effective, efficient and fair.

28. **Mr. Dettling** (Switzerland), also speaking on behalf of Liechtenstein, said that, although the new system of administration of justice was a significant improvement over its predecessor, the growing caseload levels and limited resources were beginning to put a strain on both the formal and informal systems. A number of cases could have been resolved informally or even avoided altogether if better management practices had been in place. The two delegations therefore agreed with the Advisory Committee on the need for an interim independent assessment to determine whether the increasing caseload resulted from greater trust in the system or the promotion of a culture of litigation.

29. In order to prevent growth of the backlog of cases, and in the light of the imminent reduction in the number of judges, it was important to find a solution that guaranteed the right to an effective remedy. In that connection, he also expressed support for the requests for additional resources for the Management Evaluation Unit and the Office of Staff Legal Assistance and hoped for progress at the current session on the question of a mandatory staff-funded mechanism to support the Office of Staff Legal Assistance. However, the Secretariat should indicate the most viable option. The debate on the scope of the system of administration of justice should continue, but, to avoid overburdening it, any expansion should be incremental. The Secretary-General's proposal for an expedited arbitration procedure for contractors and consultants was promising and should be refined further. Effective remedies should also be available to other non-staff categories of personnel, regardless of the nature of their contractual relationship with the Organization.

30. **Ms. Yajima** (Japan) said that her delegation concurred with the Advisory Committee's recommendation for an interim independent assessment. The increasing number of cases proceeding to formal adjudication was a cause for concern, as the more efficient, less cumbersome and less emotionally stressful solution for staff and the Administration was to resolve disputes through the informal mechanism. In that connection, her delegation commended the outreach work of the Office of the United Nations Ombudsman and Mediation Services and the efforts of the Management Evaluation Unit to resolve disputes in the early stages. The Secretary-General should also take steps to strengthen good management practices within the Organization, in order to address underlying problems that could lead to workplace disputes.

31. The legal advice and guidance provided to staff by the Office of Staff Legal Assistance could also be effective in resolving disputes before they reached the Tribunals. However, staff should arrange their legal representation themselves. Further discussion was therefore needed on the mandate of the Office. Her delegation also had concerns about the feasibility and cost of an expedited arbitration procedure for consultants and contractors, and about extending access to the system of administration of justice to non-staff personnel, which would not only lead to more resource implications but also make the system more complex.

32. **Mr. Soomro** (Pakistan) said that impartial and uniform application of rules ensuring integrity, fairness and equality had a direct impact on the overall performance and success of the Organization, which must attract and retain the best calibre of staff in order to implement its complex mandates. The new system of administration of justice had been discussed extensively by the General Assembly, as all stakeholders had agreed that the old system no longer met the Organization's needs. Financial constraints should not therefore be allowed to hamper the development of the new system.

33. It was important to monitor the implementation of the new system and to analyse trends in caseload and resources. Moreover, the informal dispute resolution system should be strengthened to avoid burdening the Tribunals. In that context, the Management Evaluation Unit played an important role in addressing grievances at an early stage. A guide based on the lessons learned could be produced and disseminated to all managerial staff in order to promote a culture of dialogue and strengthen good management practices.

34. His delegation was concerned at the risk of a backlog of complaints lodged by peacekeeping mission staff, as a result of the lack of staff in the Management Evaluation Unit specifically dedicated to handling such cases. Permanent measures should be put in place to ensure that the Unit's resources were used more efficiently. To encourage the informal resolution of disputes, steps should also be taken, first, to ensure that the Office of the United Nations Ombudsman and Mediation Services had sufficient resources; second, to implement a 360-degree performance appraisal system across the Organization; and third, to enforce accountability in cases in which contested decisions had resulted in awards of compensation to staff. In that connection, the Secretary-General should clarify why no information on concrete measures taken to enforce accountability had been provided to the Committee, despite being requested by the General Assembly in its resolution 66/237.

35. His delegation supported the continued efforts of the Office of the United Nations Ombudsman and Mediation Services to raise awareness of the benefits of collaborative approaches in the workplace and to give staff the tools to prevent workplace conflicts. It also welcomed other initiatives, including the participation of the Ombudsman in meetings of the Management Performance Board and conflict competence workshops, and hoped that the revised terms of reference for the Office of the United Nations Ombudsman and Mediation Services would be submitted to the General Assembly promptly.

36. Priority should be given to disability-related applications filed by Secretariat staff and, with the bulk of its backlog removed, the Dispute Tribunal should be able to dedicate more of its time to new cases, which had increased considerably in 2011, and strive to reduce further the average completion time for each case. While his delegation noted the Advisory Committee's recommendation that an interim independent assessment of all functioning aspects of the system of administration of justice should be carried out, it was concerned that the Advisory Committee appeared to have acted outside its mandate on a number of questions before the General Assembly by assuming a more legislative role.

37. The review of the scope, mandate and functioning of the Office of Staff Legal Assistance, including the proposal for a mandatory staff-funded mechanism, should be carried out expeditiously. Given its critical role in the system of administration of justice, the Office must be staffed with qualified legal experts. The views of all stakeholders, including the Staff Management Committee, must be taken into account in major reform initiatives that affected staff, thus helping to avoid critical gaps in major policy decisions.

38. **Mr. Kelapile** (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that the Advisory Committee had reconsidered the position adopted in its previous report (A/66/7/Add.6) on a comprehensive assessment of the evolution and functioning of the new system of administration of justice, having perhaps overestimated whether the system had evolved sufficiently to warrant such an assessment. The current recommendation for an interim assessment focused on taking stock of the general orientation of the system and ensuring that it was meeting its governing principles, as set out in General Assembly resolution 61/261. He recalled that paragraph 5 of General Assembly resolution 66/237 had acknowledged the need for the new system to be carefully monitored to ensure that it remained with in the parameters established by the General Assembly.

39. By taking the bold decision to establish a new system of administration of justice, the Member States clearly wished to prevent the new system of justice from becoming costly, cumbersome and slow, like the previous system. It was therefore probably a good idea to monitor the new system regularly; particularly as the Organization's internal legal system had no counterpart or precedent. It was in that context that the Advisory Committee had recommended that a regular review process should be established to address substantive issues, with a view to taking corrective measures sooner rather than later, and thereby ensuring that the new system met the General Assembly's objectives.

40. The Advisory Committee was not seeking in any way to challenge the legislative authority of the General Assembly; rather it was seeking to complement the express wishes of the Member States. He wished to reassure the representative of Pakistan that the Advisory Committee did its best to stay within its remit. It would take seriously any perceived failure in that regard. Internal corrective mechanisms were in place in an effort to ensure that the Advisory Committee acted within the scope of its mandate.

The meeting rose at 4.50 p.m.